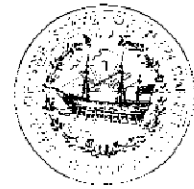




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



In re: Walts Development Corporation

**475 Main Street
Lancaster, NH**

**NOTICE OF DECISION ON
MOTION FOR RECONSIDERATION**

Administrative Fine No. AF 01-028

Procedural Background and Notice of Decision

On April 25, 2001, the Waste Management Division ("the Division") issued a Notice of Proposed Administrative Fine and Hearing to Walts Development Corporation ("Walts Development") for violations relating to the management, transportation, and disposal of hazardous waste on property located at 475 Main Street, Lancaster, NH ("the Site").

The hearing was held on December 4, 2001. By Notice of Decision ("the Decision") dated October 3, 2002, the Department of Environmental Services ("DES") imposed fines against Walts Development totaling \$4,500 of which \$2,250 was suspended contingent on certain conditions specified in the Decision. Of the remaining \$2,250 non-suspended portion of the fine, \$1,125 was to be used to fund a supplemental environmental project, and \$1,125 was payable within 30 days of the date of the Decision.

The motion for reconsideration ("the Motion") was filed with the Commissioner's office on November 3, 2002. RSA 541:3 provides that a party may file a motion for reconsideration 30 days after a decision. In this case, the filing deadline was November 2, 2002, which was a Saturday, so the filing period was extended to the first working day thereafter, or November 4, 2002. Thus, the Motion was timely filed in accordance with RSA 541 and Env-C 204. The Division was invited to respond to the Motion and filed a response on November 22, 2002 ("the Response").

Discussion and Findings

In the Decision, a fine of \$1,500 was imposed against Walts Development for violating Env-Wm 603.09 by failing to maintain a training program and provide training to employees involved in the transportation of hazardous waste; a fine of \$1,500 was imposed for violating Env-Wm 603.10 by failing to maintain a written contingency plan; and a fine of \$1,500 was imposed for violating Env-Wm 609.06(e) by failing to carry spill control equipment in the vehicle used to transport hazardous waste. (*Decision*)

Env-Wm 603.09 requires a hazardous waste transporter to maintain a training program for

employees transporting hazardous waste. Env-Wm 603.10 requires a hazardous waste transporter to maintain a written contingency plan in the event of an emergency while transporting hazardous waste. Env-Wm 609.06(e) requires a hazardous waste transporter to carry spill control equipment in the transporter vehicle.

Although the following violations were supported by the record, no fine was imposed against Walts Development for violating Env-Wm 603.06(a)(1)(2) and (3) for failing to display the company's name, the business office location, and the transporter registration number, respectively, on both sides of the vehicle used to transport hazardous waste; for violating Env-Wm 609.06(b) and (d) for failing to ensure that a copy of its hazardous waste transporter registration confirmation letter and a copy of the contingency plan, respectively, was carried in the transporter vehicle; for violating Env-Wm 807.07(b) and (c) for failing to include certain information on its bills of lading and for failing to maintain copies of its bills of lading for three years, respectively.

Env-Wm 603.06(a)(1) requires a hazardous waste transporter to display its company's name on its hazardous waste transporter vehicle. Env-Wm 603.06(a)(2) requires a hazardous waste transporter to display the city and state where its business office is located on its hazardous waste transporter vehicle. Env-Wm 603.06(a)(3) requires a hazardous waste transporter to display its transporter registration number on its hazardous waste transporter vehicle. Env-Wm 609.06(b) requires that a copy of the hazardous waste transporter registration confirmation letter be carried in each transporter's vehicle. Env-Wm 609.06(d) requires that a copy of the contingency plan be carried in each transporter's vehicle. Env-Wm 807.07(b) requires certain information to be included in a bill of lading. Env-Wm 807.07(c) requires that a transporter keep a copy of a bill of lading for each shipment on file for three years from the date of the shipment.

Mr. Walts, President of Walts Development, owns the Site which is located at 475 Main Street, Lancaster, New Hampshire. Walts Development picks up used oil from local businesses to burn in its waste oil burner. On May 5, 1998, DES issued Walts Development its first New Hampshire hazardous waste transporter registration. *(Record)*

On January 5, 2001, DES inspected the Site and discovered numerous violations of the hazardous waste transporter rules. At the inspection, DES staff found that Walts Development did not display its name, business location, or transporter registration number on both sides of the vehicle it used to transport hazardous waste. DES further discovered that Walts Development did not maintain a training program for employees involved in transporting the hazardous waste, maintain a written contingency plan for an emergency occurring while transporting hazardous waste or have a copy of the contingency plan in the transport vehicle, did not have a copy of the hazardous waste transporter registration confirmation letter in the vehicle used to transport hazardous waste, and did not carry spill control equipment in the vehicle used to transport hazardous waste. Further, Walts Development did not include the complete address of the generator, the EPA identification number of the transporter, and the quantities of used oil transported, on its bills of lading, and did not maintain copies of its bills of lading for three years. *(Record)*

At the inspection, staff informed Mr. Walts that he could comply with the rules within 30 days or contact DES to request an extension to comply. Mr. Walts failed to comply within 30 days or to contact DES to request an extension to comply. *(Record)*

Miscommunication

In the Motion, Mr. Walts asserts that there was a miscommunication with respect to the time frame for Walts Development to comply. Mr. Walts referred to the Division's testimony at the December 4, 2001 hearing in which he asserts that DES staff acknowledged that he (Mr. Walts) told them that 30 days would not be enough time to address the violations because he was under time constraints due to his business expansion. Mr. Walts asserts that staff stated that additional time could be granted if requested, but neither recalled how much more time he did in fact request. Mr. Walts indicates that informing staff that 30 days was not enough time to comply was comparable to requesting additional time. (*Motion*)

In the Motion, Mr. Walts refers to the full inspection DES conducted in January 2001, noting that the Site was inspected three times prior to the January inspection. He maintains that he did not know whether DES conducted full or partial inspections. He asserts that the partial inspections conveyed to him "a false sense of compliance." (*Motion*) The Response emphasizes that the record shows that the Division informed Walts Development that it could comply within 30 days or ask for an extension to comply, that Walts Development never asked for an extension, and that it finally came into compliance 60 days after the inspection. (*Response*)

It appears that Mr. Walts believes that no fine should be imposed against Walts Development because of a miscommunication. Specifically, Walts Development intended to comply and requested additional time. The Division, however, maintains that it did not receive a request for an extension.

The issue regarding a misunderstanding between the parties was considered prior to imposing the administrative fine. The record accurately reflects that the Division informed Walts Development that it had 30 days to comply with the rules or it could request an extension. Walts Development failed to request an extension. I believe that the Division offered sufficient proof to support the findings that the violations occurred and that Walts Development failed to request an extension to comply.

In the Decision, I found that Walts Development violated 10 hazardous waste rules, however, I imposed a fine for only three of these rules. As stated previously, a fine was imposed against Walts Development for failing to maintain a training program and provide training to employees involved in the transportation of hazardous waste, for failing to maintain a written contingency plan, and for failing to carry spill control equipment in the vehicle used to transport hazardous waste. Of the total imposed fine of \$4,500, \$2,250 was suspended, \$1,125 was to be used to fund a supplemental environmental project, and the remaining fine of \$1,125 was payable within 30 days. The record supports the findings and conclusions documented in the Decision. Walts Development has offered no new evidence to suggest that the Decision was in error. Thus, I believe that the fine imposed against Walts Development is warranted.

Record of Meeting

In the Motion, Mr. Walts identifies an additional reason for reconsideration. He states that there is no record of a meeting in Gorham between himself and DES that was held in Spring 2002. Further, he requested, but was not furnished with notes from that meeting. It appears that Mr. Walts believes that the

Motion should be modified because DES did not give him the information he requested. (*Motion*)

In response, the Division states that by letter dated April 12, 2002 to Mr. Walts, it summarized the meeting by outlining a settlement offer. In addition, the Response notes that the Division's legal counsel was not keeping minutes of the meeting but rather, notes to help with settlement discussions and these notes, taken during a non-public settlement discussion, do not have to be disclosed. (*Response*)

I believe that Mr. Walts argument with respect to his request for notes from the meeting is immaterial and should not affect the Decision.


Decision

The request for reconsideration is **denied**. The \$4,500 fine shall stand subject to the conditional suspensions noted in the Decision and the supplemental environmental project. The remaining \$1,125 fine shall be paid within 30 days of the date of this decision.

The fine payment shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES Office of the Commissioner, 6 Hazen Drive, PO Box 95, Concord, NH 03302-0095.

So Ordered.

Date: December 26, 2002

COPY

George Dana Bisbee
Acting Commissioner

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99